

APPROVED

**Conservation Commission Meeting
June 20, 2016 at 6:30 PM
City Hall Auditorium, 62 Friend Street
Amesbury, MA**

Meeting called to order at 6:35 P.M.

Present: Alan Corey, Kinsey Boehl, Suzanne Egan, Steve Langlois.

Absent: Adrienne Lennon

**Also Present: John Lopez, Agent; Barbara Foley, Recording Secretary;
Joan Baptiste, Transcription**

MINUTES:

May 2, 2016 Motion to approve by Alan Corey, seconded by Kinsey Boehl. AIF.

Administrative:

***Merrimac Board of Selectmen – Lake Attitash Water Level Discussion (*continued TBD*)**

***Ordinance/Bill No.: 2016-028:** Open Space, Natural Resources, and Trails Committee (Municipal Councilor Scorzoni). The committee will be comprised of seven individuals to include one member of the conservation commission. Continued to July 18 so that Councilor Sherwood can explain the issues.

***Enforcement Order –** 31 Pleasant Valley Road (Stockwood) issued for the removal of an existing asphalt driveway and replacement of same. No valid OOC or a negative RDA in place. Applicant is required to submit NOI. All conditions of Enforcement Order have been met. Further discussion of this item later in minutes.

***Request for Additional Funding for Environmental Monitor Services** (36 Haverhill Road) **Sean McReynolds** project director for developer of 36 Haverhill Road, Corcoran/Jennison. All necessary erosion control installations have been completed. Here to provide update as to how the project has been proceeding.

***Request for Mitigation Plan –** 36 Haverhill Road Proposed widening of trench for installation of sewer lines was approved in April. In May the plan was provided, here tonight to ask if there are any questions.

Connor Nagle, VHB presented the mitigation plan. Propose replacement of 2 – 1 of trees with 3” diameter tree at chest height. There is a one-year warrant on tree replacement.

Steve Langlois – you removed 6 trees, you will replace them with 12 trees.

Motion by Kinsey Boehl to approve the mitigation plan contingent upon a 2 to 1 replacement of trees at 3” diameter at chest height and provide an updated plan for 36 Haverhill Road, second by Alan Corey. 3 in favor.

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Motion by Kinsey Boehl to accept the additional funds, second by Alan Corey. 3 in favor.

Suzanne Egan arrives 6:48 pm

Continued Business:

***NOI (002-0954) 46 Fern Avenue (Coogan)**

John Lopez this was a request for Certificate of Compliance but you will recall it was pursuant to a violations which had occurred with deviations from the approved plan. There was 756 square feet of additional surface that was paved. The house was sold and the current property owner knows nothing of these violations. To find resolution, the commission tasked the former property owner to come up with a calculation as to how many trees or shrubs would adequately fit into the 750 sq. ft.

Chris Coogan, formerly of 46 Fern Avenue Eight years ago I bought the house and the contractor was supposed to follow up on all the conservation things and did not. Since then the house has been sold. In lieu of a fine, I am willing to fund the purchase of plants at the cost of \$650.00 for Middle School students to plant them wherever the Commission desires.

Motion by Suzanne Egan to resolve this by having the former owner of 46 Fern Avenue pay \$650 to earmark for the Middle School remediation fund, second by Alan Corey. 4 in favor.

NOI (002-1132) 5 Merrill Street (Linden) *(continued to July 18)

ANRAD – 34, 35, & 40 Water Street and 17 Chestnut Street (Goodman) *(withdrawn)

***NOI (002-1142) 78 Lake Attitash Road (Buscanera)**

Michael Seekamp representing Vincent Buscanera. Commission has required the review by Mill River – we have answered questions posed by Mill River. Plans have been revised that were requested.

John Lopez we received the revised plans today. The is \$700 remaining in the review fee account which is sufficient to cover the cost of review by Mill River. I recommend that they give it one more look to make sure that all the changes have been made.

Motion by Kinsey Boehl to continue this hearing to July 18 and have the agent draw up an order of conditions, second by Suzanne Egan. 4 in favor.

Motion by Suzanne Egan to continue Request for Certificate of Compliance (002-1127) 78 Lake Attitash Road to July 18, second by Kinsey Boehl. 4 in favor.

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NOI (002-1141) Village at Bailey's Pond (Fafard Development) *(continued to July 18)

New Business:

***Request for OoC Extension (002-0969) 37 Middle Road (Anderson)**

John Lopez this is a request for an extension on an Order of Conditions that was issued to the commission a long time ago. This actually dates back to the bylaw. The Commission did issue one extension. Then through an act of the Massachusetts Legislature pursuant to the permit extension act it was extended for another 4 years. The OOC expires under the local July 22, 2016. This is why the applicant is before us. There is a request for the extension of the OOC. The commission will also recall that this has been the subject of numerous enforcement actions. The most recent of which was ratified on June 15, 2015 for the restoration of an isolated vegetated wetland. That restoration was never implemented. The OOC is nearing its expiration there are two OOC...a superseding OOC under the Act (State), and an OOC under the local. The commission has in its packet correspondence from DEP who has approved an extension on their OOC. The applicant has also been required to modify the plans. It even gets more complicated. There were two sets of plans that were approved...State and Local. We needed to coordinate and have that isolated vegetated wetland incorporated into the state approved plans. What we have before us is a request for an extension to an OOC which corresponds to the same plans that DEP approved through an extension. The caveat is that DEP is requiring the restoration to be complete by June 30, 2016.

Bob Prokop, Wetland Consulting Services Last summer I submitted a revegetation plan based upon the approved plan that the Planning Board signed. That plan was not the same one that DEP had which was based on a superseding order back in 2007. DEP issued an enforcement order against Mr. Anderson because they had already completed the work based on the Planning Board approval. The DEP approved plan showed no wetland, but the Planning Board approved plan showed about 1,000 sq. ft of BVW and 600 sq. ft. of isolated wetland being impacted. We met with DEP and came up with a restoration plan which goes back to the original 2007 plan which shows no wetland impact.

What we need is approval of the original plan dated 2007 that shows no wetland impact, and approval of the restoration plan that DEP has approved.

Attorney Charles Houghton, represents Thomas Anderson. DEP built into their Administrative Consent Decree that if we don't complete the work by June 30 there will be a \$23,300 fine. We've paid \$8,000 so far. We have a construction contract with the buyer so that we can get the work done before he purchases it. Planning Board approved the plan pending a mylar to sign next week. That will correct the recorded plan which is sheet 4 of 11.

Bob Prokop, we are ready to go on the wetland restoration once you approve. The restoration must get done first.

John Lopez DEP will perform periodic inspections of the site during the restoration work and will coordinate the visits with Wetlands Consulting Services. We need to lift or amend the Enforcement Order which would clear the way for the new version.

Motion by Suzanne Egan to amend the Enforcement Order issued on June 2, 2015 (002-0969) to implement the wetlands restoration plan entitled Plan of Land in Amesbury MA showing wetland replication at 37 Middle Road sheet 1 of 1 prepared by Millennium Engineering Inc. dated May 13, 2016 as show in DEP correspondence dated June 3, 2016 to delete the wetlands restoration plan and incorporate the new restoration plan that has been

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approved by DEP with the work to be done by June 30, 2016 or date determined by DEP. Second by Alan Corey. 4 in favor.

Motion by Suzanne Egan to continue the request for extension that is required by DEP and in accordance with the existing OOC to the July 18 meeting, second by Alan Corey. 4 in favor

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***Request for Certificate of Compliance (002-486) Market Street, Lot 29 (Massachusetts Electric Co.)**

John Lopez this was an OOC that was issued a long time ago (1996) for the installation **Tracy Dorr**, Conico Engineers on behalf of Mass Electric. The project was for the installation of two 4" PVC conduits under a stream connecting to a new utility pole in Market Street and a new transformer on Hannah Currier drive.

Motion by Suzanne Egan to issue a Certificate of Compliance for DEP 002-486, second by Alan Corey, 4 in favor.

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**\*NOI (002-1146) 72 Lake Attitash (Arling)**

**John Lopez** the applicant has revised the plan that was originally submitted with the NOI. The original plan called for the construction of a detached garage. Comments received from Juliet Brice at 75 Lake Attitash Road and Len Bearse at 70 Lake Attitash Road which are entered into the public record. The commission has a peer review contract from Mill River. I would recommend if the commission goes forward with a peer review that these comments be included. **Matt Steinel**, Millenium Engineering representing the applicant at 72 Lake Attitash Road for the renovation and reconstruction of the existing house and garage. We spoke with the abutters and listened to their concerns. They didn't want the garage in the side yard because they thought it was going to impact the lake. The owners agreed to go back to the original garage location which is in front of the house. They want to tear down the existing garage and build a new one in the same spot. We intend to remove all the pavement from the site (approx. 1,000 sq. ft.), to square off the garage, and install pervious pavers on the opposite side of the garage. We propose to have the entrance on the side. In addition to the garage the intention is to raise the house up, remove the existing pile foundation and construct new sonatubes and lower the house back down. The end result will be the reduction of paved surface on the property.

**Juliet Brice**, 75 Lake Attitash Rd abutter would prefer to see the house preserved and not demolished. They will be decreasing the amount of open space on the lot. Not in favor of the new driveway. Would hope they would not disturb undisturbed land. There is no description of the materials that will be used.

**Matt Steinel** the 4x4 outside shower is optional. Not a paved surface will not increase impervious surface. The statement of 5 cars being able to park (shows sketch) I can only squeeze 3 cars bumper to bumper in that area. Access to garage will be on the side because it's unsafe to have it in the front.

**Suzanne Egan** it would be helpful to put the dimensions of the garage on the existing plan.

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**Len Bearse**, 70 Lake Attitash Road abutter. Concerned with runoff and drainage. Driveway will be level with the street. What type of fill will be used? Will there be a stop/barrier for the car?

**Matt Steinel** we are aware that there is concern for runoff. What we are proposing will not increase the runoff.

**Suzanne Egan** would it be possible to keep the driveway where it is, add some sort of drainage system to mitigate the runoff.

**Matt Steinel** we will be removing the pavement at the front of the property which will eliminate runoff. The fill material will be clean fill. A barrier system is possible.

**Juliet Brice** my concern is still the amount of open space.

**Matt Steinel** parking area was being left as a courtesy. As far as zoning, it is up to the zoning enforcement officer to direct us to the ZBA.

**John Lopez** – abutters should submit their comments in writing to incorporate it into the public record and third party review.

**Motion by Suzanne Egan to refer to third party review by Mill River Consulting, second by Kinsey Boehl. 4 in favor.**

**Motion by Suzanne Egan to continue this item to July 18, second by Kinsey Boehl. 4 in favor.**

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**\*NOI (002-xxxx) 444-446 Main Street – (Yemma) (*withdrawn*)**

**\*NOI (002-1147) 9-13 South Hampton Road (Quintal)**

**John Lopez** This was before the commission in an earlier variation a few months ago. It went to peer review and our consultant (BSC) determined that there was a bordering vegetated wetland (BVW) on site. The applicant during the initial NOI only identified an isolated vegetated wetland which is jurisdictional only to the local. This was returned to the applicant for further proceedings. He elected to withdraw the earlier NOI and resubmit to the commission and DEP showing the BVW. There is also a reduction in the scope of work. The applicant is here tonight to explain.

**Carlos Quintal** representing Bastien estate. *Moves away from microphone....inaudible.*

We went before the ZBA for a finding to move the location of the proposed house closer to the property line which was granted. The existing home is 12 feet from So Hampton Rd and 10 feet from the property line on the south side. *inaudible* All the work is outside the buffer..*inaudible* The one thing that you will notice on my drainage calcs is under existing conditions there is a portion of that lot (*inaudible*) in front that discharges towards South Hampton Road. By my calculations I assume that everything is going elsewhere. That is more a safety (*inaudible*) when it gets to So. Hampton road but it certainly is in lesser numbers that what you had before. We are proposing to use a compost sock as opposed to silt fence *inaudible*.

The proposed house will be built on foundation. The existing foundation is not usable (cracked).

**Kinsey Boehl** in the regulations is says that no mitigation is sufficient to allow a wall type foundation less that 50 feet to a resource area. How does that meet the regulation?

**Carlos Quintal** Going back to the original letter from BSC where it clearly addresses that particular issue, we've documented an alternative analysis. The proposed impact is on disturbed



land and the impact is relatively small and we will request a waiver that I have with me. There is also a waiver request for filing fee.

**John Lopez** this request comes because this is the second submission. The applicant had to re-notify abutters, place the legal notice in paper. The waiver request would be for the filing fee under the Amesbury Ordinance only.

**Kinsey Boehl** what is the purpose of the filing fee.

**John Lopez** to cover administrative expenses.

**Kinsey Boehl** which we still had with the second application. I don't understand how it meets the regulations. They are very specific about structures on foundations within 50 feet.

**Paul Gagliardi**, attorney for Bastien Estate. I'm wondering why this is being asked. My experience with this board despite that language, waivers have been typically granted for situations like this. Waivers have been granted for piles within 35 feet of the resource area. They have been granted for full foundations within 50 feet of the resource area. Why is this being treated differently?

**Kinsey Boehl** any specific details?

**Paul Gagliardi** the Marina office building down at Hatter's Point is on pilings within 35 feet

**Kinsey Boehl** that met the requirement for a Mill complex so there are state waivers under that jurisdiction.

**Paul Gagliardi** we were just talking about the one before this...within 50 of the resource area on full foundation.

**Kinsey Boehl** that got sent to third party review

**Paul Gagliardi** but you also talked about a waiver for the pavers within 50 feet

**Kinsey Boehl** so we've been in this situation before I don't specifically remember any concrete examples in my term.

**Suzanne Egan** so if a waiver request hasn't been submitted to the board then we don't have anything before us to grant. So that would be the first step. Once this is sent to third party review then we will make that determination. But I think that all instances when people have asked for it, they have addressed the concerns as opposed to saying nobody else has had to apply for the waiver. So if you would address that issue, specifically on this lot, that would be helpful.

**Paul Gagliardi** we would be more than happy to but we're being told that even if we address it that's not possible.

**Suzanne Egan** I don't think anyone said that.

**Paul Gagliardi** the experience has been different.

**Kinsey Boehl** my question specifically was the regulations are very clear on what it says regarding structures on foundations. How are you addressing the regulation?

**Paul Gagliardi** how do you interpret that position?

**Kinsey Boehl** read it, it's very clear.

**Paul Gagliardi** It's my understanding that the commission has not been an absolute prohibition on foundations within 50 feet. There have been waivers granted.

**Kinsey Boehl** I'm not aware of any.

**Carlos Quintal** in the letter from BSC it clearly referred to potential waivers even for the 35 foot.

**Steve Langlois** a waiver would have to be initiated.

**Suzanne Egan** is this an application for the construction on one dwelling for one lot? Or is this a combined lot. You show this as lot one and lot two and then a house. Does that mean there is nothing occurring on Lot 1? Is that being reserved as an unbuildable lot?

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**Paul Gagliardi** we are requesting an OOC to build a single family home on one of the lots. Nothing on the second lot.

**Suzanne Egan** is it an unbuildable lot?

**Paul Gagliardi** from a zoning standpoint it is a buildable lot. Whether we would even be able to get an order of conditions to build it is a different issue.

**Steve Langlois** from the first meeting one of the concerns of the neighbors was the drainage towards the rear of the property. I'm noticing in the narrative that the proposed conditions of the site grading will direct most of the stormwater runoff over land towards the rear of the property.

**Carlos Quintal** as it does today. I can't change that. You won't give us permission to go into that area.

**Paul Gagliardi** I think the abutters' concern was that we were proposing to replicate compensatory wetlands. They didn't want us to create wetlands that would impact them. Also at that meeting one of the suggestions of the conservation commission was that we go to the ZBA and see if we couldn't move the house further away from the wetlands and we did that. We were able to get a finding from the ZBA to enable us to push the house as far over as makes sense away from the wetlands. Now we're coming in with a proposal that is pretty much taking care of what the abutters concern was. I don't think we can get the house any further away.

**Steve Langlois** That wetland is related to the catch basin.

**Carlos Quintal** that area drained openly to that catch basin. It didn't pond. If you look at the topo on the existing conditions when work started on that lot some material was excavated. That's what created the ponding.

**Steve Langlois** is there a culvert under the street.

**Carlos Quintal** the pipe goes into....inaudible.

**Steve Langlois** where does most of this water come from that settled there.

**Carlos Langlois** it's rain water.

**Motion by Suzanne Egan to refer to third party review by Mill River Consulting section 21.7 structures under the Amesbury Wetland regulation paragraphs 2, 3, 4, 5, and 6 new structures in substantially renovated or reconstructed structures on any barrier beach... Second by Kinsey Boehl. 4 in favor.**

**Carlos Quintal** we would like to use the December 2 letter from BSC that already agrees to the wetland line. There is no reason to have somebody else come back and relive that piece. I understand that somebody might want to review the drainage or other items but certainly not the delineation of the wetland.

**John Lopez** perhaps the review could confirm that the changes have been made pursuant to BSC's recommendations.

**Motion by Kinsey Boehl to deny applicant's request for waiver of filing fees. Second by Suzanne Egan. 4 in favor.**

**Motion by Suzanne Egan to continue this item to July 18. Second by Alan Corey. 4 in favor.**

**John Lopez** the applicant has submitted a waiver request pursuant to the ordinance section 21.7. accepted and entered into the record.

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**\*NOI (002-xxxx ) 31 Pleasant Valley Road (Stockwood)**  
Applicant is not in attendance.

**Motion by Suzanne Egan to continue to July 18. Second by Alan Corey. 4 in favor.**

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**\*444-445 Main Street- NOI Withdrawal – City Filing Fee Refund (Yemma)**  
**John Lopez** This request comes under the ordinance in that the applicant has withdrawn his notice of intent. DEP has put a stop to cashing his check under the act. Commissioner Corey will recuse himself as he is an acquaintance of the applicant. I recommend that the refund be approved.

**Motion by Kinsey Boehl to approve refund of application fees. Second by Suzanne Egan. 3 in favor, Alan Corey recused.**

**Motion to adjourn was made by Suzanne Egan and seconded by Alan Corey. AIF.**

**Meeting adjourned at 8:45 P.M.**